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## Land sub-category as an important element of the conceptual apparatus of the land law science

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The article is devoted to the concept “land sub-category”, which is insufficiently studied in the theory of land law. The author established the fact that despite the widespread use of the phrase “sub-category of lands” by domestic and foreign scientists, there are no studies aimed specifically at revealing this concept and defining the same sub-categories of lands. During the study, it has been found that the current land legislation has about 119 sub-categories of land, which are within different categories of lands. Using the methods of theoretical and legal science, it was made an attempt to reveal the concept of “land sub-category” and provide it with an appropriate definition. It is stated that land sub-categories play an important role in the normal functioning of the current land legislation in Ukraine, because the lack of allocation and proper legal regulation of land sub-categories can lead to the massive violations (intentional or reckless)

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in the use of land according to their intended purpose. For the effective solution of the issue of proper legal regulation of land sub-categories, the author has analyzed the successful experience of the United States of America regarding the relevant issue. In addition, it is proposed the development of a normative legal act that could perfectly regulate the relevant land-legal categories, establish a complete classification of the main categories and sub-categories of lands, as well as provide them with a detailed characteristics. In the final stage of the study, the author notes that there is an urgent need to pay proper attention to this issue by legislators, scientists and practitioners

**Keywords:** land sub-category, category of lands, division of land into sub-categories, purpose of land, land legislation

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### **Introduction**

Recently, the problem of dividing land into categories according to their intended purpose has increasingly become the object of research in the scientific work of domestic scientists. Some researchers consider the division of land into categories as a relic of the Soviet land law, while others defend the position of impossibility of the normal existence of land legislation without land categories and the inadmissibility of their replacement or expropriation [1]. However, amid this doctrinal discussion, the concept of “land sub-category” remains deprived of scientific attention, which is completely in the shadow of the concept “category of lands”, and this, in turn, causes its little research. Despite the current situation, the correct disclosure of the concept “land sub-category”, the provision of qualification signs for it and the definition of land sub-categories requires proper attention from lawmakers, scientists and practitioners for a long time, since the deprivation of sufficient legislative regulation of lands that belong to the land sub-category can lead to a massive violations (intentional

or reckless) of land legislation, in the context of using lands within the category not according to their intended purpose. In turn, this can also lead to the weakening of foundation of an element of land law – the category of land, which basis consist of the land sub-category. The author is convinced that the above-mentioned statements predetermines the relevance of this topic within the land law science.

Despite the numerous mentions of scientists in their works about the “land sub-categories”, after a detailed analysis of scientific works that were in the author’s access, there were not found studies by domestic and foreign scientists that would reveal the concept “land subcategories” (even without specific reference to the title “sub-category”). Thus, in particular, the following researchers mention the concept “land subcategory” in their scientific works: T.M. Magomedova [2], Yu.S. Petlyuk [3], A.P. Anisimov [4], A.P. Ushakova [5]. However, ignoring the fact that there are no scientific works that reveal the concept and content of “land subcategory”, some issues that

somehow relate to the subject of this study have been disclosed by V.M. Yermolenko [1].

*The purpose of the article* is a scientific and legal analysis of the concept “land sub-category”, determination of its content and composition, substantiation of the importance of proper legal regulation of the land sub-category from in terms of land-legal science and practice, as well as an attempt to find ways to create such legal regulation.

### **Results and Discussion**

Starting the study of the concept “land sub-category”, it should be noted that the current Land Code of Ukraine does not contain the concept “land sub-category”. For comparison, despite the list of existing land categories defined by the Land Code, the latter one does not disclose the concept “land category”. It is only possible to guess about the existence of land sub-categories based on the content of norms that regulate a particular category of land, and the content of classifier of the types of designated purpose of lands. Thus, according to the Classification of types of special purpose, there are 119 land sub-categories [6].

Considering the lack of legislative and doctrinal definitions of the concept “land sub-category”, the author considers it appropriate to try to reveal this concept. Thus, for the interpretation of the concept, it is worth resorting to the theoretical foundations of legal science and logic. E.A. Pryashnikov [7] in his work draws attention to the unity of elements such as the phenomenon of reality – the concept – the term. The main, defining and primary concept – the phenomenon of reality. The concept is a reflection of such a phenomenon in the

people’s mind, and the term serves as a verbal expression of concept [7]. The concept as a form of thinking is a way of reflecting reality, due to which the subject is revealed through the totality of its important features. The definition of concept is a logical operation that reveals its content. The name of the definition operation comes from the Latin word “*definite*”. Etymologically, the word “definition” means “setting boundaries”, “determination”. Therefore, often instead of the name of the concept, the name of the definition is used. With the help of definition, it is formed a meaning for a term that is introduced into the communicative process for the first time, or it is clarified the meaning of already used term [8].

Based on this, it should be initially analyzed the concept “sub-category”, the definition of which has already been provided. Thus, the explanatory dictionary of the Ukrainian language defines a “sub-category” as a category, which in turn is part of a broader category [9]. In the context of the author’s study, the category of land refers to the broader category, which includes the land sub-category.

First of all, it is worth agree with the opinion of V.M. Ermolenko [1] that the category of land is a generic concept, which unites the land types that are related in terms of common homogeneous properties. At the same time, the consideration of the category of lands as a generic concept is a common feature (classification grouping), while the special feature is the inter-relationship of lands according to common properties (natural and social) [1].

According to the author opinion, the land sub-category is a part of lands that are

part of the corresponding category. However, despite their common features, they have some features that allow them to be relatively isolated from other lands of the corresponding category. That is, the sub-category is also a generic concept, but it combines a narrower list of lands according to their common homogeneous and specific properties (which allows them to be distinguished from their parent or main category).

The importance of existence and proper registration of the land sub-category can be cited on the example of the most valuable category of land for Ukraine – agricultural land. Thus, the moratorium on the alienation (acquisition) of agricultural land for certain subjects of land legal relations, established by the paragraph 15 of the “Transitional Provisions” of the Land Code of Ukraine, covers only some sub-categories of agricultural land, rather than the entire category (for commercial agricultural production, land plots allocated in kind (on the ground) to the owners of land shares. Thus, if all lands in the category of rural land were reduced exclusively to one category without dividing them into sub-categories, then the mentioned moratorium would cover all agricultural land without exception. At the same time, in practice, the subjects of state registration of rights to real estate (when carrying out registration actions regarding the agricultural land plot) pay attention primarily to the land sub-category, as well as to the fact – whether it is allowed for one or another subject to acquire it for the own right.

The land sub-category plays an equally important role in the legal regulation of relations that arise from the protection and use of lands for residential and public

buildings. Thus, for example, the construction of an apartment building is allowed only on the land sub-category “for the construction and maintenance of an apartment building”, and its construction on other lands of residential and public buildings will be considered a violation of the target use of the land, despite the fact that this category in general implies a construction of buildings on it (including apartment buildings). However, relevant examples can be given for any category of land.

Meanwhile, most citizens are more familiar with the right for free privatization of land, defined in the Art. 121 of the Land Code of Ukraine [10], it also provides for a one-time receipt within the limits of norms of various land sub-categories within the one category. In the case when legislator notes the free land acquisition for citizen, for example, only for agricultural purposes (without distinguishing sub-categories) within a certain norm, then it will be excluded the possibility of differentiated acquisition of land for farming, for individual farm household and for gardening, which, in turn, will limit the ordinary citizen in the implementation of various types of agricultural activities.

According to the author’s opinion, each land sub-category should be properly characterized. For example, the experience of the United States, namely the state of North Carolina, is interesting. Thus, in the corresponding state, “A Standard Classification System for Mapping of Land Use and Land Cover” has been existing there for 27 years [11], aimed at the efficient use of land plots located within the state, considering their natural properties in order to

protect the entire environment from the negative impact of people on the ecosystem created by nature. It is interesting that the corresponding document contains not only classification of the main categories and sub-categories of lands, but also their detailed characteristics. It is worth noting that the detailed description of corresponding lands is not limited to the categories only; sub-categories are given even more attention in their determinations. The author believes that it is advisable to create a similar regulatory legal act in Ukraine. To develop it, it is necessary to involve the specialists from various fields (land law, land management, soil science, ecology, chemistry, etc.) in order to provide a professional characteristics of this or that land sub-category and the established norms for its use. Such a document should describe in detail each sub-category of lands that currently exists in Ukraine, and establish its specific legal regime. This regulatory legal act should establish an effective mechanism for changing the intended use within one category, considering the consequences of such a change for the environment, or establish restrictions on such a change, for example, for especially valuable sub-categories of lands.

### **Conclusions**

Considering all of the above-mentioned, it is worth noting that such an important element of the conceptual and categorical apparatus of land-legal science as “land sub-category” currently remains almost

unexplored, and it is often identified with the concept “category of lands”. However, there are numerous references to the concept “land sub-category” in the works of domestic and foreign scientists, although none of them reveals this concept. This study allows concluding that the land sub-category is part of the lands, which are included in the corresponding category. However, despite their common features, they have some features that allow them to be relatively isolated from other lands of the corresponding category. In general, the land sub-category is a generic concept that unites a narrower range of lands according to their common homogeneous and specific properties. The author is absolutely convinced that the land sub-categories, their composition and legal regime are quite important for the development of land legislation and countering the misuse of lands, which make up the land fund of Ukraine. Thus, there is an urgent need for proper legal regulation of this element of land law. In author’s opinion, the relevant legal regulation should take place through the development and adoption of a completely new normative legal act, which would contain the list of all sub-categories of land, as well as establish a legal regime for each of them, including the effective and simple mechanism for changing the intended use within the category of land. However, before the adoption of the relevant legal act, it is worth holding a number of conferences and round tables among the scientists and practitioners of various industry areas.

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## Субкатегорія земель як важливий елемент понятійного апарату земельно-правової науки

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### Анотація

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Стаття присвячена недостатньо дослідженому в теорії земельного права поняттю «субкатегорія земель». Автором встановлено той факт, що попри широке використання вітчизняними та зарубіжними науковцями словосполучення «субкатегорія земель», відсутні будь-які дослідження, що спрямовані саме на розкриття цього поняття та окреслення тих самих субкатегорій земель. У процесі дослідження встановлено, що чинне земельне законодавство налічує близько 119 субкатегорій земель, які перебувають в межах різних категорій земель. Використовуючи методи теоретико-правової науки здійснено спробу розкрити поняття «субкатегорія земель» та надати йому відповідне визначення. Констатується, що субкатегорії земель відіграють важливу роль в нормальному функціонуванні чинного земельного законодавства нашої держави, адже відсутність виділення та належного правового регулювання субкатегорій земель може призвести до масових порушень (умисних чи необережних) у використанні земельних ділянок за їх цільовим призначенням. Для ефективного вирішення питання щодо належного правового регулювання субкатегорій земель, автором було проаналізовано успішний досвід Сполучених Штатів Америки, що стосується відповідного питання та запропоновано розробку нормативно-правового акта, який би зміг досконало врегулювати відповідні земельно-правові категорії, встановити повну класифікацію основних категорій та субкатегорій земель, а також надати їм детальну характеристику. У завершальному етапі дослідження автором наголошується на тому, що існує гостра потреба в приділенню належної уваги до даного питання законотворців, науковців та практиків

**Ключові слова:** субкатегорія земель, категорія земель, поділ земель на субкатегорії, цільове призначення земель, земельне законодавство

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